

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
April 5, 2005 Session

**WILBUR WATTS and wife, RUTH WATTS, v. HARVEY SHANNON and  
wife, JUDY SHANNON and WILLIAM J. LEGGINS**

**Direct Appeal from the Chancery Court for Scott County  
No. 8942     Hon. Billy Joe White, Chancellor**

**Filed July 11, 2005**

**No. E2004-01030-COA-R3-CV**

In this boundary line dispute, the Trial Court established boundary and awarded plaintiffs' damages against adjoining property owner and his surveyor. On appeal, we affirm.

**Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed.**

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and SHARON G. LEE, J., joined.

Harold D. Balcom, Jr., Kingston, Tennessee, for appellants.

Sidney R. Seals, Oneida, Tennessee, for appellees.

**OPINION**

This action arose from a boundary line dispute wherein plaintiffs sued Harvey and Judy Shannon, and their surveyor, William Leggins. Plaintiffs alleged that the Shannons hired Leggins to survey their property, but misidentified their property lines, such that an erroneous survey was prepared by Leggins and filed in the Register's Office, in violation of Tenn. Code Ann. § 62-18-124(d). Plaintiffs alleged that the dispute was due to false information provided by the Shannons, and Leggins' negligent performance of his duties as a surveyor, and further that defendants were

guilty of negligence, fraud and outrageous conduct. Plaintiffs asked for damages and that the Court establish the true boundary line between the parties.

Following a trial, the Chancellor issued an Opinion from the bench, and noted that the discrepancy in acreage on Mr. Shannon's deed and the survey prepared by Leggins was "hair raising". The Trial Court said that the surveyor had an absolute duty to do his own surveying and not let someone else show him where the lines were. The Court found that Leggins, knowing there was a problem, had relied on what Shannon had told him.

The Court credited plaintiffs' surveyor's survey of the property, and rejected Leggins' survey. In establishing plaintiffs' boundary line as found by plaintiffs' surveyor, the Court said that plaintiffs had owned the property in dispute for 40 years, possessed it, cut timber on it, etc., and had superior title to the property. Regarding Leggins' negligence, the Court found that Leggins, in making the survey, should have discussed the dispute which he knew about with Watts, and further observed that to survey property and find 57 acres when the deed only called for 14 was negligent. Further the Court found that Shannon contributed to Leggins' mistake, and awarded plaintiffs their actual damages consisting of attorney's fees, survey fees, and court costs against the defendants in the amount of \$10,691.89.

The defendants appealed and insist that the Trial Court did not have subject matter jurisdiction to try the negligence action on the grounds that the Trial Court did not have jurisdiction to try cases for unliquidated damages. *See* Tenn. Code Ann. § 16-11-102.

As this Court has previously explained, however, a chancery court may hear a claim for unliquidated damages so long as the court has acquired jurisdiction upon some other recognized equitable ground. *See, e.g., Industrial Development Bd. of City of Tullahoma v. Hancock*, 901 S.W.2d 382, 384 (Tenn. Ct. App. 1995).

In this case, the Chancery Court had jurisdiction of the boundary line dispute. *See* Tenn.Code Ann. § 16-11-106. Thus, the Court could also decide plaintiffs' claim of negligence against Leggins in the same action. We find this issue to be without merit.

Next, Leggins argues that the Trial Court erred in finding him guilty of negligence, since he was not in privity with the plaintiffs, and relies on *Tartera v. Palumbo*, 453 S.W.2d 780 (Tenn. 1970).

\_\_\_\_\_ *Tartera* involved a defendant surveyor who allegedly performed a negligent survey that plaintiffs relied upon, and then plaintiffs later had to move their house because it was across the actual property line. The Supreme Court held that the plaintiffs could not sue the defendant surveyor for malpractice/negligent performance of a contract, because they had not hired him and were not in privity with him. The Court stated that plaintiffs could, however, state a cause of action for negligent misrepresentation, because they alleged the defendant failed to exercise reasonable care when acting in the course of his profession, supplied false information for the guidance of others in

a business transaction, and the plaintiffs justifiably relied upon that information to their detriment.

Plaintiffs, in response, rely on the case of *Whitelaw v. Brooks*, 138 S.W.3d 890 (Tenn. Ct. App. 2003), wherein the Western Section of this Court held that a landowner could recover damages from a surveyor who was hired by another party, even though the landowner did not rely on the survey, because the landowner had been required to incur attorney's fees to quiet title to his property so that it could be sold. The opinion relies on the Supreme Court's opinion in *Pullman Standard, Inc. v. ABEX Corp.*, 693 S.W.2d 336 (Tenn. 1985), wherein the Court stated that "One who through the tort of another has been required to act in the protection of his interest by bringing or defending an action against a third person is entitled to recover reasonable compensation for loss of time, attorney fees and other expenditures thereby suffered or incurred in the earlier action."<sup>1</sup>

*Whitelaw* is authority for plaintiffs maintaining their action and recovering damages against the surveyor. Moreover, the privity requirement enunciated by *Tartera* does not apply to the facts of this case. The evidence, as found by the Chancellor, establishes that the surveyor violated his statutory duty to plaintiffs herein by filing the erroneous survey in the Register of Deeds Office without notice to plaintiffs. Tenn. Code Ann. § 62-18-124(d) provides:

A licensed land surveyor during the conduct of a boundary survey where there is discovered, or reasonably should have been discovered, any major apparent discrepancy as defined by the board between the deed description of adjoiners, evidence of use or possession not consistent with deed descriptions, or otherwise has notice that there is an adverse claim across a boundary, shall notify the affected adjoiners. . . .

The evidence establishes that the surveyor recorded his survey without complying with the mandatory requirements of this statute. The Trial Court is affirmed on this issue.

Next defendants argue that evidence preponderates against the Trial Court's finding that Leggins was negligent. We cannot agree. There was expert testimony from surveyors Reed and Nance that Leggins negligently prepared a survey, and relied upon a tax map and Shannon's information, and that proper research was not done regarding adjoining property owners. Leggins testified that he felt he owed no duty to the community or other property owners, but only owed a duty to his client, to survey and did not have to go behind his client's deed so long as he was "comfortable" with it. A review of Leggins' testimony establishes, as the Trial Court properly found, that Leggins admitted to relying heavily upon a tax map and Shannon's direction, and that Leggins was on notice that there was a dispute before he undertook the survey, and otherwise should have realized there was a problem when his survey found 57 acres where the deed called only for 14. The

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<sup>1</sup> *Pullman* involved a suit against a wheel manufacturer by a rail tank car manufacturer who incurred attorney's fees and litigation expenses defending lawsuits resulting from a derailment, and the derailment was caused by a defective wheel. The Court stated that Pullman could recover those expenses under an implied right of indemnity due to the relationship of the parties.

evidence does not preponderate against the Trial Court's finding that Leggins acted negligently to plaintiffs' detriment. Tenn. R. App. P. 13(d).

Further, Shannon argues that the Trial Court erred in finding he was negligent, since no claim of negligence was brought against him. However, plaintiffs did plead negligence against Shannon, in their Complaint, and the Trial Court found that Shannon "helped create" the problem with the survey by supplying information to Leggins that was incorrect. The evidence supports the Trial Court's finding that Shannon contributed to the negligent survey performed by Leggins.

Defendants argue that the Trial Court erred in finding that the plaintiffs were the owners of the disputed property, and specifically, in finding that they had established adverse possession. The issue of adverse possession is essentially a non-issue, since the Trial Court found that Watts owned the property because it was encompassed by his deed. The Court simply pointed out Watts' possession and use of the property as further indicia of his ownership.

Defendants also argue the Trial Court should have found that they owned the disputed property based upon Tenn. Code Ann. § 28-2-109, "Payment of Taxes Presumption."

As we understand defendants' position, it is contended that they paid taxes on property described in a tax map since they purchased the property in 2000. They did not establish who paid the taxes on these parcels prior to 2000. The Trial Court found that the tax map was inaccurate and erroneous, and not to be relied upon, and the evidence does not preponderate against this finding. Watts was found to be the owner of the land, based upon the deeds in his and Shannon's chains of title, and based upon this finding, which is supported by the evidence, Tenn. Code Ann. §28-2-109 does not apply, because Shannon failed to show that he had a recorded assurance of title for 20 years. Similarly, Shannon cannot rely on the bar created by Tenn. Code Ann. §28-2-110, for the same reasons. This section states:

Any person having any claim to real estate or land of any kind, or to any legal or equitable interest therein, the same having been subject to assessment for state and county taxes, who and those through whom such person claims have failed to have the same assessed and to pay any state and county taxes thereon for a period of more than twenty (20) years, shall be forever barred from bringing any action in law or in equity to recover the same, or to recover any rents or profits therefrom in any of the courts of this state.

We have previously held that "A party attempting to rely on the statute as a bar must clearly show that the other party failed to pay the taxes." *Bone v. Loggins*, 652 S.W.2d 758, 761 (Tenn. Ct. App. 1982). Such was not shown here, where Watts was found to be the deed owner of the property and Shannon was not. Moreover, Watts was shown to have paid taxes for more than 20 years on his 64 acre parcel of land. The evidence does not preponderate against the Court's decision on these issues. Tenn. R. App. P. 13(d).

We affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to defendants.

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HERSCHEL PICKENS FRANKS, P.J.